

BRIEF STATEMENT OF THE MATTER INVOLVED.

Section 58 of the California Workmen's Compensation, Insurance and Safety Act of 1917 (chapter 586 California Laws 1917) reads as follows:

"Sec. 58. The Commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act."

The constitutionality of this section was attacked below and is here attacked by plaintiff in error upon the ground that it contains an unwarranted discrimination between resident and nonresident employees of California injured outside of California. It is asserted by plaintiff in error that such alleged discrimination between residents of California and nonresidents of California renders this section offensive to article IV, section 2 of the Constitution of the United States, securing to the citizens of each state the privileges and immunities of the citizens of the several states, and also to the provisions of the Fourteenth Amendment to the Constitution of the United States, prohibiting the states from denying to any person within their jurisdiction, the "equal protection of the laws. If the contentions of plaintiff in error be sustained by this court, the effect will be to divest the Workmen's Compensation Act of

California of all extraterritorial force. The Supreme Court of California has ruled, in the case of *North Alaska Salmon Company vs. Industrial Accident Commission et al*, 174 Cal. 1, 162 Pac. 93, that said act cannot have extraterritorial application except by specific statutory provision, and there is no statutory provision having this effect other than section 58 of the Compensation Act, above.

REASONS FOR MAKING THIS APPLICATION.

As this motion is presented jointly by plaintiff in error and one of the defendants in error, we will endeavor to illustrate the importance of the question presented from the point of view of each side.

I.

The decision in this case will determine the rights of traveling salesmen and other traveling employees hired in California whose work carries them transiently outside the state of their residence. If section 58 be held invalid, a resident employee, frequently employed by an employer who is also resident in California, would be under the difficulty of having to maintain his action under the law of some foreign state with which he was not familiar and which was not within the contemplation of the parties at the time of the creation of the contract of hire. If the law of such foreign state be a Workmen's Compensation Act enforceable only through a board or commission, both parties would either face procedural

difficulties involving the jurisdiction of the courts of their own state to enforce the foreign statute or would have to go to such foreign state for the purpose of litigation.

As to the employer, the question is presented as to how he can protect himself against liability under the laws of all states in which his employees may be found transiently upon business, or whether he can defend or insure his liability under the laws of the state of his residence and principal place of business.

II.

A similar situation presented under section 58 exists where contracting concerns recruit their labor force in California for a particular construction job to be performed outside the state, returning the men to California at the close of their work.

III.

The present case deals particularly with the Alaska fisheries problem. Laborers are recruited each spring in the Pacific coast states to work in the Alaska fisheries during the open season, who are returned to the state of origin at the close of the season's work, both employers and employees being mainly resident in the Pacific coast states and not in Alaska.

The question, as viewed by plaintiff in error, is whether its liability is to be determined by the law of the territory in which the work is carried on and

the injury is received, or the law of the state of residence of the parties and the making of the contract of hire.

As to the workmen, the question is presented of whether they can claim workmen's compensation benefits under the law of the state of their residence and hiring, or must look to the law of Alaska.

As to the State of California, the question is presented of whether California can protect itself against its citizens and residents taken hence for transient labor and returned here in a disabled condition, or being killed abroad, leaving dependents within the state, in either of which cases local charitable aid, public or private, may be necessary.

As to the Territory of Alaska and states other than California in which an employee who was hired in California may be injured, the question is presented as to how far the respective industrial commissions of such territory or state should take jurisdiction over the matter and thus protect their own citizens against disabled dependents.

Without regard to the merits of the respective contentions, the uncertainty itself is detrimental to all parties concerned. An employer cannot ascertain with assurance, until the decision of this case, what law fixes his obligation. Similarly, an employee cannot determine with assurance, in which forum to bring his proceeding, nor can insurance carriers insuring liability under the workmen's compensation

act of the state, determine with assurance what premiums to collect in such cases.

Another reason why early decision is requested is that the California Legislature will hold its next biennial session next spring and will normally not meet again until 1923. If amendment of the statutory provision in question should be necessitated by the decision of this court, it is quite important that this fact be known if possible before the coming session of the Legislature adjourns.

We therefore respectfully request that this cause be advanced to early hearing.

Respectfully submitted.

WARREN GREGORY,

DELGER TROWBRIDGE,

Counsel for Plaintiff in Error
Quong Ham Wah Company.

WARREN H. PILLSBURY,

Counsel for Defendant in Error
Industrial Accident Commission
of the State of California.

FILE COPY
JUL 26 1911
D. BAKER, CLERK

In the Supreme Court

OF THE
United States

October Term, 1930

No. 638

QUEONG HAN WAN COMPANY,

Plaintiff in Error.

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE
STATE OF CALIFORNIA, and E. J. PRAGBURY,
WILL J. FRENCH and MEYER LAMMER, as
members of and constituting said Commission,
OWB MINE, and ALASKA PACKING
ASSOCIATION (a corporation),

Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

WARREN GREGORY, ✓

ALLEN L. CRICKENING, ✓

DELORE TROWBRIDGE, ✓

Attorneys for Plaintiff in Error.

•

Table of Contents.

	Page
Statement of Facts.....	1
I. Argument	8
II. If the statute gives a right to a resident of the State of California which is not given to a non-resident of that State, then it is clearly violative of Section 2 of Article IV of the Federal Constitution and also of Section 1 of the 14th Amendment	10
III. Section 58 of the California Compensation Act does not cover the claim of a nonresident of the State, because (a) the language of the Act plainly limits it to injuries suffered by a resident of the State, and (b) the entire Act has unmistakable evidence that it was never intended by the Legislature that the operation of the law should be extended to nonresidents.....	14
IV. Although the provisions of the Federal Constitution may, in certain cases, extend the privileges and immunities of the citizens of a particular State to the citizens of the several States, nevertheless such principle has no application in the instant case, because there is thereby extended a burden as well as a privilege or immunity....	21
V. A discrimination between residents and nonresidents violates Section 2 of Article IV of the Constitution with the same effect as if the discrimination were between citizens of the several States	34
VI. The judgment of the Court below should be reversed	36